

Message Text

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ACTION ARA-20

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-07 H-03 INR-10 L-03

NSAE-00 NSC-07 PA-04 RSC-01 PRS-01 SP-03 SS-20 AID-20

COME-00 EB-11 FRB-02 TRSE-00 XMB-07 OPIC-12 CIEP-02

LAB-06 SIL-01 OMB-01 STR-08 CEA-02 IO-14 USIE-00

INRE-00 NSCE-00 SSO-00 DRC-01 /167 W
----- 041642

O R 262135Z JUN 74

FM AMEMBASSY BRASILIA

TO SECSTATE WASHDC IMMEDIATE 4143

INFO AMCONSUL RIO DE JANEIRO

AMCONSUL SAO PAULO

LIMITED OFFICIAL USE SECTION 1 OF 2 BRASILIA 4703

E. O. 11652: N/A

TAGS: ETRD, EFIN, BR

SUBJECT: FOREIGN MINISTRY NOTE ON SHOES

1. BATISTA, HEAD OF FONOFF ECONOMIC DEPT., LATE AFTERNOON OF JUNE 25, GAVE EMBASSY FIRST PERSON NOTE ON USG COUNTERVAILING DUTY INVESTIGATION ON IMPORTS OF BRAZILIAN FOOTWEAR. NOTE CALLS FOR "POLITICAL WILL AT HIGHEST LEVEL" TO RESOLVE ISSUE AND SUGGESTS THAT USG SUSPEND INVESTIGATION OR DEFER ANY DECISION UNTIL MTN ARE CONCLUDED. AS ALTERNATIVE, NOTE SUGGESTS BILATERAL CONSULTATIONS ON BASIS OF EXISTING GATT NORMS. INFORMAL TRANSLATION FOLLOWS:

BEGIN QUOTE:

EXCELLENCY:

I HAVE THE HONOR TO REFER TO THE CURRENT INVESTIGATION PROCEDURES BEING CARRIED OUT BY THE TREASURY DEPARTMENT IN CONNECTION WITH THE ALLEGED SUBSIDIZATION OF BRAZILIAN NON-RUBBER FOOTWEAR TO THE UNITED STATES. AS YOU ARE AWARE,
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BRAZIL HAS COOPERATED FULLY WITH US AUTHORITIES IN PROVIDING

ALL THE NECESSARY INFORMATION ON THE TECHNICAL AND LEGAL ISSUES INVOLVED. AS A FURTHER PROOF OF THIS SPIRIT OF COOPERATION, AND "AIDE-MEMOIRE" HAS BEEN FORWARDED TO THE US TREASURY DEPARTMENT SUMMARIZING AND CONSOLIDATING THE BRAZILIAN VIEWS ON THE LEGAL AND ECONOMIC ASPECTS OF THE CASE.

THE BRAZILIAN GOVERNMENT, HOWEVER, BELIEVES THAT THIS QUESTION TRANSCENDS THE PURELY LEGAL FRAMEWORK OF THE TREASURY DEPARTMENT INVESTIGATION, AND SHOULD THEREFORE BE CONSIDERED AT THE HIGHEST POLITICAL LEVEL. THIS POSITION IS TAKEN BECAUSE OF THE IMPLICATIONS OF THIS ISSUE FOR BRAZILIAN TRADE AND ECONOMIC INTERESTS, AND BECAUSE OF THE UTMOST IMPORTANCE WE ATTACH TO THE MAINTENANCE OF MUTUALLY BENEFICIAL RELATIONS WITH THE UNITED STATES. WE THINK, IN OTHER WORDS, THAT THE TIME HAS COME TO GIVE DIPLOMATIC TREATMENT TO WHAT IS ESSENTIALLY A DIPLOMATIC ISSUE.

IT IS INADMISSABLE TO THE BRAZILIAN GOVERNMENT THAT A QUESTION OF SUCH SIGNIFICANCE TO ITS ECONOMIC INTERESTS SHOULD BE HANDLED AS IF IT WERE A MERELY LEGAL DISPUTE BETWEEN PRIVATE CONCERNS OF BOTH COUNTRIES. IT IS EVEN LESS ADMISSABLE THAT SUCH A PROCEDURE SHOULD BE INITIATED UNILATERALLY, ON THE BASIS OF UNITED STATES DOMESTIC LEGISLATION, WITHOUT REGARD TO THE FACT THAT SUCH QUESTION IS INHERENTLY BILATERAL, INVOLVING THE NATIONAL INTERESTS OF A FRIENDLY COUNTRY, AND CANNOT, BY ITS VERY NATURE, BE SOLVED IN THE LIGHT OF A LEGALISTIC INTERPRETATION OF US DOMESTIC INTERESTS ALONE.

ACTION ON THE BASIS OF SUCH LEGISLATION IS ALL THE MORE UNWARRANTED TO THE EXTENT THAT IT DIFFERS FUNDAMENTALLY FROM INTERNATIONALLY ACCEPTED NORMS IN THIS FIELD AS EMBODIES IN GATT. THUS, IT DOES NOT REQUIRE, FOR THE APPLICATION OF COUNTERVAILING DUTIES, THE EXISTENCE OF DAMAGE TO DOMESTIC INDUSTRY. FURTHERMORE, IT FAILS TO DIFFERENTIATE BETWEEN OBLIGATIONS OF DEVELOPED COUNTRIES AND THOSE OF DEVELOPING COUNTRIES IN RELATION TO EXPORT SUBSIDIES OF INDUSTRIAL PRODUCTS, A FUNDAMENTAL DISTINCTION IF DEVELOPING COUNTRIES ARE TO DIVERSIFY THEIR EXPORTS AND BE ABLE TO COMPETE WITH DEVELOPED COUNTRIES LONG ESTABLISHED IN THE INTERNATIONAL MARKETS.

THE HISTORICAL RECORD OF THE APPLICATIONS OF THE COUNTERVAILING DUTY LAW REVEALS THAT DESPITE APPEARANCE OF LIMITED OFFICIAL USE

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EXTREME RIGIDITY THE ADMINISTRATION HAS EXERCISED A SUBSTANTIAL DISCRETION IN ITS IMPLEMENTATION. WE WELCOME MOREOVER THE NEW PROVISIONS INCLUDED IN THE TRADE REFORM ACT ON THE QUESTION OF COUNTERVAILING DUTIES INASMUCH AS THEY MAY PROVIDE FOR EVEN GREATER FLEXIBILITY FOR THE US GOVERNMENT IN COMPLYING WITH INTERNATIONAL RULE OF TRADE. IT WOULD HOWEVER BE EXTREMELY REGRETTABLE IF UNDER THE ALLEGATION OF CONGRESSIONAL PRESSURE, THE US GOVERNMENT

WERE TO TAKE SPECIFIC ACTION AGAINST THE LEGITIMATE INTERESTS
OF A CLOSE TRADING PARTNER THROUGH THE RIGID IMPLEMENTATION OF
THE EXISTING LEGISLATION.

THIS WOULD BE PARTICULARLY REGRETTABLE, SINCE THE
IMPOSITION OF COUNTERVAILING DUTIES ON BRAZILIAN EXPORTS OF
FOOTWEAR SEEMS BOTH UNNECESSARY TO THE UNITED STATES BECAUSE
BRAZILIAN EXPORTS OF FOOTWEAR INVOLVE NO ACTUAL OR POTENTIAL
DAMAGE TO US FIRMS OR ECONOMY AND FURTHERMORE BECAUSE THE US
HOLDS A PERSISTENTLY FAVORABLE TRADE BALANCE WITH BRAZIL.
IT WOULD BE HARMFUL TO BRAZIL, BECAUSE ITS TRADE AND ECONOMY
WOULD BE SERIOUSLY AFFECTED, WITH GRAVE SOCIAL IMPLICATIONS UNDER REG
IONAL LEVEL.

MOREOVER, SUCH ACTION WOULD SEEM INCONSISTENT WITH THE
SPIRIT OF RECENT TLATELOLCO AND WASHINGTON CONFERENCES OF
MINISTERS, AND WITH THE STANDSTILL COMMITMENT UNDERTAKEN BY
THE UNITED STATES, INCLUDING THE RECENT DECLARATION IN THE
FRAMEWORK OF THE OECD.

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INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-07 H-03 INR-10 L-03

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LAB-06 SIL-01 OMB-01 STR-08 CEA-02 IO-14 USIE-00

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FM AMEMBASSY BRASILIA

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FURTHERMORE, THIS SEEMS TO PUT INTO QUESTION THE
DECLARED OBJECTIVE OF UNITED STATES TRADE POLICY TO SEEK

THE EXPANSION AND EVER-GREATER LIBERALIZATION OF WORLD TRADE, THROUGH THE MTN, AN OBJECTIVE WHICH THE BRAZILIAN GOVERNMENT HAS ALWAYS SUPPORTED AND CONTINUES TO SUPPORT. IT SEEMS TO PUT INTO QUESTION, AT THE SAME TIME AND EVEN MORE BASICALLY, THE COMMITMENT UNDERTAKEN BY THE UNITED STATES IN THE TOKYO DECLARATION TO CONSIDER THE GRANTING OF DIFFERENTIAL AND MORE FAVORABLE TREATMENT TO DEVELOPING COUNTRIES. IS THE UNITED STATES PREPARED TO HONOR THAT COMMITMENT, BY INTRODUCING POSITIVE DIFFERENTIATION IN FAVOR OF DEVELOPING COUNTRIES, OR IS IT INCLINED, YIELDING TO PROTECTIONIST PRESSURE, TO INTRODUCE A NEGATIVE DIFFERENTIATION, BY PENALIZING A DEVELOPING COUNTRY FOR PRACTICES FOLLOWED BY ALL INDUSTRIAL COUNTRIES, INCLUDING THE UNITED STATES?

IN LIGHT OF THE CONSIDERATIONS ABOVE, THE BRAZILIAN GOVERNMENT SUGGESTS THAT THE US GOVERNMENT CONSIDER THE FOLLOWING COURSE OF ACTION:

(A) TO SUSPEND THE INVESTIGATION, OR TO DEFER ANY LIMITED OFFICIAL USE

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DECISION UNTIL THE MULTILATERAL TRADE NEGOTIATIONS ARE CONCLUDED; TO SEEK TO EVOLVE, IN THE MTN, A MULTILATERAL CODE ON SUBSIDIES AND COUNTERVAILING DUTIES, ESTABLISHING NEW NORMS, THAT WOULD EXPLICITLY RECOGNIZE THE PRINCIPLE OF DIFFERENTIATED TREATMENT TO DEVELOPING COUNTRIES, IN BOTH AREAS.

(B) SHOULD THIS PROVE IMPOSSIBLE, TO CONDUCT BILATERAL CONSULTATIONS WITH BRAZIL ON THE BASIS OF EXISTING GATT NORMS.

THE BRAZILIAN GOVERNMENT FULLY APPRECIATES THE COOPERATION AND UNDERSTANDING SO FAR SHOWN BY THE US AUTHORITIES. WE ARE PARTICULARLY GRATEFUL FOR THE CONSTRUCTIVE SPIRIT DISPLAYED BY AMBASSADOR EBERLE ON THIS ISSUE, DURING HIS RECENT TRIP TO BRAZIL, AND FOR THE VERY POSITIVE STAND TAKEN BY THE US DELEGATION DURING THE LAST MEETING OF THE WORKING GROUP OF THE TRADE NEGOTIATIONS COMMITTEE WHICH EXAMINED, LAST MAY, THE QUESTION OF SUBSIDIES AND COUNTERVAILING DUTIES.

THE BRAZILIAN GOVERNMENT, HOWEVER, BELIEVES THAT MORE CONCRETE ACTION IS NOW NECESSARY, BOTH DOMESTICALLY AND INTERNATIONALLY. SUCH ACTION REQUIRES POLITICAL WILL AT THE HIGHEST LEVEL ON THE PART OF THE US GOVERNMENT. THIS MEANS THAT A DECISION ON THE CASE OF BRAZILIAN FOOTWEAR CANNOT BE TAKEN ON TECHNICAL MERITS ALONE, BUT SHOULD TAKE FULLY INTO ACCOUNT THE BROADER POLITICAL IMPLICATIONS OF THE ISSUE.

IF THE US GOVERNMENT DOES NOT TAKE INTO CONSIDERATION ALL ELEMENTS INVOLVED IN THE PROBLEM, A SITUATION WILL BE CREATED IN WHICH THE BRAZILIAN GOVERNMENT CANNOT REMAIN IMPASSIVE AND WILL BE FORCED TO TAKE CONSEQUENT ACTION TO PROTECT ITS LEGITIMATE ECONOMIC INTERESTS.

I TAKE THIS OPPORTUNITY TO RENEW TO YOUR EXCELLENCY
ASSURANCES OF MY HIGHEST CONSIDERATION.
END QUOTE.

2. COMMENT - NOTE IS STRONGLY WORDED AND REFLECTS RECENT
STATEMENTS BY GOB OFFICIALS THAT GOVERNMENT WOULD TAKE
ACTIONS NECESSARY TO DEFEND DOMESTIC INDUSTRIES FROM PRO-
TECTIONIST MEASURES IN MARKET COUNTRIES. TONE OF NOTE IS
INDICATIVE OF HEAVY DOMESTIC PRESSURE ON GEISEL GOVERN-
MENT TO MAINTAIN SUPPORT FOR EXPORT INDUSTRIES. THESE
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PRESSURES HAVE BEEN ACCENTUATED BY ADVERSE TRADE FIGURES
REPORTED FOR MONTH OF MAY WHICH PROMPTED ADJUSTMENT
IN EXCHANGE RATE THIS WEEK AND NEW RESTRICTIVE MEASURES
ON IMPORTS OF NON-ESSENTIALS (REPORTED BRASILIA 4685).

3. FURTHER MOTIVATION FOR FOREIGN MINISTER'S NOTE
APPEARS TO HAVE BEEN GOB APPREHENSION FOLLOWING TALKS
IN WASHINGTON THAT TREASURY WAS CONSIDERING AS A POSSIBLE
OPTION AN ANNOUNCEMENT OF COUNTERVAILING DUTY WITH LEVEL
OF RATE TO BE DETERMINED AT LATER DATE. SUCH AN ANNOUNCE-
MENT WOULD, OF COURSE, IMMEDIATELY PARALYZE ALL FOOT-
WEAR SHIPMENTS.

4. ON JUNE 26 EMBOFF SPOKE TO BARTHEL-ROSA OF FONOFF
TRADE POLICY DIVISION, WHO SAID THAT NOTE WAS DELIVERED
AFTER CONSIDERATION OF ALL TALKS AND COMMUNICATIONS TO DATE.
HE SAID GOB IS CONVINCED THAT TREASURY HAS ALREADY DECIDED
TO COUNTERVAIL AND THAT ONLY DECISIONS REMAINING ARE LEVEL OF
DUTY AND TIMING OF APPLICATION. THEREFORE, HE SAID, GOB
FELT OBLIGED TO TAKE STRONG POSITION REFLECTED IN NOTE.
CRIMMINS

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Message Attributes

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Draft Date: 26 JUN 1974
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